

Exhibit C

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, :
4 PLAINTIFF, : 12CR50
5 :
6 versus : United States Courthouse
7 : 225 Cadman Plaza East
8 : Brooklyn, N.Y. 11201
9 GRAZIANO ET AL, :
10 : JULY 25, 2012
11 DEFENDANTS. : 9:30 a.m.
12 -----x

13 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
14 BEFORE THE HONORABLE CAROL B. AMON
15 UNITED STATES DISTRICT COURT JUDGE

16 A P P E A R A N C E S:

17 For the Government:
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Proceedings recorded by mechanical stenography, transcription
by computer-aided transcription.

CHARISSE KITT, CRI, CSR, RPR, FCRR
Official Court Reporter

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1 (In open court; defendants are present.)

2 THE CLERK: United States against Graziano. The
3 Court would like all the lawyers, actually, to step forward.

4 United States against Graziano, Badalamenti, and
5 Balsamo.

6 Please state your appearances for the record.

7 MR. DENNEHY: For the government, Jack Dennehy,
8 D-e-n-n-e-h-y.

9 Good morning, Your Honor.

10 MR. PARROTTA: Good morning, Your Honor and good
11 morning counsels, Patrick Parrotta for Mr. Graziano, who's
12 been produced by the United States marshals and is seated at
13 counsel table.

14 MR. FISCHETTI: Good morning, Your Honor. My name
15 is Ronald Fischetti, I represent Mr. Badalamenti with
16 Mr. Franz; he's here.

17 MR. ROSEN: Good morning, Your Honor. Michael Rosen
18 for Mr. Balsamo, who is here.

19 THE COURT: All right, good morning.

20 I have a very basic problem in connection with all
21 of the presentence reports and the letters that have been
22 filed in response to various objections, and that is based on
23 the accounts in the presentence report.

24 I have virtually no idea what happened in this case.
25 The prosody of the information is just -- is just that. There

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1 are references to John Doe one, John Doe two. There's no
2 description of what was said. Mr. Fischetti has raised an
3 issue about whether it's the same transaction.

4 The government's sole response to that is that he
5 hasn't produced documentation; I don't understand that as a
6 response.

7 There is just no information in here about what took
8 place. Every single presentence report has the same account
9 of two purported collections of unlawful debts. They all read
10 the same. There's a reference in them, in the reports to a
11 John Doe three. Apparently that's a typo?

12 Is that correct, Mr. Dennehy?

13 MR. DENNEHY: In which presentence report, Your
14 Honor?

15 THE COURT: It's all the same. They all say the
16 same thing. There's four paragraphs that talk about two
17 extortions. The indictment has multiple charges in it, none
18 of that's mentioned anywhere and the descriptions of what
19 happened are so vague as to give me no real information about
20 what took place.

21 Mr. Balsamo, I believe, is to be a minimum player.
22 I have no idea why that's the case. There's nothing in here
23 that gives this Court any principle basis to make assessments
24 about relative culpability or, in fact, to know really what
25 any one individual did with respect to other defendants who

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1 are on next week.

2 Mr. Calabrese, there's no description of anything he
3 did. It's just a statement basically of what the indictment
4 says.

5 The same is true of Mr. LaForte. It says he engaged
6 in a sports gambling operation for five years.

7 Yeah, I could have read that in the indictment.
8 There's no information in these reports sufficient for this
9 Court to make a determination of relative culpability of roles
10 in the offense; nothing that would give the Court the basis to
11 address Mr. Fischetti's concern and just, you know, all the
12 reports repeat the thing about the John Doe three.

13 Tell me, Mr. Dennehy, if there was a John Doe number
14 three -- okay, let's just pick Mr. Badalamenti's report,
15 paragraph 22.

16 Do you have the report?

17 MR. DENNEHY: I'm looking for it, Your Honor. I do
18 know there were multiple John Does in various --

19 THE COURT: Why do they have to be John Does? Why
20 can't you identify who the person is, so in reading the report
21 I have some idea who the individual is; it would also address
22 Mr. Fischetti's concerns if the people were identified, who
23 you were talking about.

24 MR. DENNEHY: Your Honor, I can certainly do that.
25 This was brought to my attention yesterday afternoon by the

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1 probation officer.

2 THE COURT: What was brought to your attention?
3 That the report didn't say anything?

4 MR. DENNEHY: Well, that your Honor had concerns
5 about there was information that --

6 THE COURT: Well, it should be obvious. It should
7 be obvious.

8 How do you read Mr. Calabrese's report and
9 Mr. LaForte's report and think that I know anything about what
10 happened? And the probation office has -- they didn't
11 investigate the case. I guess they only have one source that
12 they can come to to get the information and I certainly don't
13 have it in these reports.

14 But just answer that question. Paragraph 22,
15 Mr. Badalamenti's report, John Doe number three, is that a
16 different person or is it a mistake?

17 MR. DENNEHY: I'm being informed by the probation
18 officer that it's a typo. But there is -- there is a John Doe
19 that was numbered a different number in the indictment
20 originally.

21 THE COURT: Is it a typo or not, Mr. Dennehy,
22 reading the facts?

23 MR. DENNEHY: It is a typo.

24 THE COURT: Well, then, why couldn't any of the four
25 people here standing in front of me have brought that to my

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1 attention? I'm trying to read this thing and I'm trying to
2 figure out how the heck John Doe three has anything to do with
3 John Doe two.

4 I mean, this -- I have a job to do; you all have a
5 job to do. You've obviously cut deals here. And I'm not
6 going to sentence based on the fact that, you know, you all,
7 you know, don't have a real interest in my knowing what
8 happened. Really, this -- this is as I said the prosody of
9 the information is just something that the Court cannot make
10 reasonable decisions on.

11 I don't know why -- Why does the information have to
12 be John Does? Why can't you have it so that there's some
13 record of who was involved? Why does that information have to
14 be in that form?

15 MR. DENNEHY: Your Honor, I don't know that there's
16 a need. My initial impression was not to identify civilians
17 who were not known to the defendants prior to this or to put
18 it in the public record. I certainly can do that. They are
19 known to the government.

20 THE COURT: Well, for instance, Mister -- let me
21 just point out something else.

22 Mr. Fischetti has made this entire argument about
23 the fact that what he pled guilty to, his client pled guilty
24 to was the same thing he pled guilty to before.

25 Now, there are numerous other allegations in the

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1 indictment about things Mr. Badalamenti was involved in.

2 MR. DENNEHY: Correct.

3 THE COURT: None of that's in the presentence
4 report. Also, there is -- as I -- the little bit that is
5 there suggests that he was involved in something in 2011, but
6 that's not flushed out in any response that the government has
7 made to Mr. Fischetti's comments. And why isn't there -- you
8 know, why isn't there other information in the presentence
9 report about all the other charges in the indictment? Why is
10 that information not there?

11 MR. DENNEHY: Frankly, Your Honor, I gave to
12 probation what I thought would be sufficient, was information
13 about the counts of conviction. I certainly can go into all
14 the other counts in the indictment --

15 THE COURT: Well, isn't the government supposed to
16 provide all the information to the Court? Isn't all that
17 information supposed to be there, not just the charges in the
18 indictment? I -- people can argue about whether it can be
19 considered or not, but isn't the information supposed to be
20 before the Court?

21 I have nothing here in these reports that means
22 anything to the Court, in terms of dealing with making, as I
23 say, a reasonable judgment.

24 MR. DENNEHY: Your Honor, I was asked that the
25 government would be seeking to introduce relevant conduct or

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1 to do a Fatico Hearing. And my impression of that question
2 from probation was that under the terms of the plea agreement
3 I would not be seeking a Fatico Hearing or an upward departure
4 outside the guidelines --

5 THE COURT: There is a difference between whether
6 you're seeking a Fatico Hearing. I mean, it's the defendant's
7 who seek a Fatico Hearing if there is something in the report
8 that they think should not be considered. But it doesn't mean
9 that the government presumptively decide not to provide the
10 Court with the information.

11 I mean, I understand that there are difficult
12 balances here that if the government can't prove something it
13 might be problematic. But there's -- there can't be any
14 engaging in fact bargaining here. The Court has to know the
15 information and then arguments can be made about whether it
16 should be considered or not considered. But there's no way
17 for me to evaluate the argument made by Mr. Fischetti on
18 behalf of his client.

19 I mean, there were allegations about something
20 happening in 2011. I take it it's the government's position
21 that something happened after he pled guilty before
22 Judge Garaufis, that he continued to engage in criminal
23 conduct. If he didn't, then the issue is: Why isn't
24 Mr. Fischetti right?

25 But my presumption would be that the government

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1 thinks he continued to engage in criminal conduct. Am I wrong
2 about that?

3 MR. DENNEHY: No, Your Honor.

4 THE COURT: Where is that information?

5 MR. DENNEHY: I will supply that to probation. I
6 apologize to the Court. I will certainly go through
7 Mr. Fischetti at the detention hearing outlined the crimes he
8 believed we were charging his client with, including an
9 extortion in 1999 of Giovanni Foridia, and the extortion of
10 2002 and the extortion of 2011 of Hector Pagan. So they were
11 certainly aware of it.

12 THE COURT: Well, they might have been aware of it,
13 but guess who isn't aware of it?

14 MR. DENNEHY: I understand the Court's --

15 THE COURT: The person who has to make the
16 determination here. The government has to provide the Court
17 with -- or probation, I don't know how you want to do it --
18 with an addendum or whatever. But I have to be provided with
19 all of the information relevant to the charges, to whatever
20 other conduct there is that's relevant on the question of
21 sentencing.

22 If you are going to take the position that certain
23 people have certain roles and lesser roles, I have to know why
24 that's the case. I -- you know, I don't have any idea now why
25 that's the case. There's ten -- some of the charges that were

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1 pled guilty here talk about conduct expanding on a significant
2 amount of time. And all I have is two transactions referred
3 to, and they're not even clear.

4 So we need -- I need much more information before
5 I'm in a position to sentence a single defendant in this case.
6 And I don't understand why that wasn't obvious to everyone.

7 MR. FISCHETTI: Judge, may I be heard, if Your Honor
8 is finished?

9 THE COURT: Yes.

10 MR. FISCHETTI: Judge, there are two issues that
11 Your Honor raised; I'd like to address both of them.

12 First of all, with regard to the other crimes that
13 the government claims that Mr. Badalamenti engaged in the
14 extortions of Mr. Pagan, of Mr. Foridia, the superseding
15 indictment, the marijuana, the gambling.

16 Our position all along with the government is that
17 not only can't they prove it by a presumption, but that it
18 never happened; that he was innocent and that's why we went to
19 trial or going to trial.

20 When we agreed to take a plea to the collection of
21 the unlawful debt, we did it as the paper say because there's
22 no defense to that. Our position with that, and I think your
23 Honor is correct, with regard to the Fatico Hearing. Because
24 if the government is going to ask Your Honor to consider the
25 extortions of Mr. Pagan, the extortions of Mr. Foridia, the

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1 gambling charge, I'm going to ask for a Fatico.

2 MR. DENNEHY: That's not what I said.

3 MR. FISCHETTI: I'm not saying he said it; that's my
4 position. I think Mr. Dennehy knows that, and that's why
5 they're not asking for a Fatico Hearing. I don't want Your
6 Honor to consider any of that.

7 So if the government's position is that they want
8 Your Honor to consider those charges as relevant conduct, then
9 I'm going to ask for a Fatico Hearing, because I don't think
10 he did those things and I think -- I don't think they can show
11 it by a preponderance of the evidence with regard to
12 Mr. Badalamenti --

13 THE COURT: What is your position with respect to
14 that? Can you show that by a preponderance of the evidence or
15 not?

16 MR. DENNEHY: Your Honor, we can show it beyond a
17 reasonable doubt.

18 Mr. Fischetti, I think, is making a distinction
19 here, and that's not what I'm saying. There's evidence to be
20 shown, and I will certainly outline it for the Court and the
21 parties, that, for example, in 1999 they extorted a man named
22 Giovanni Floridia of gambling debts.

23 That evidence is also evidence of the count of
24 conviction here, CUD RICO. That in connection with his
25 affiliation with the Bonanno crime family, he collected a debt

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1 which is otherwise unlawful. That's the count he pled guilty
2 to. And that's Your Honor's question, why is there a period
3 of 1999 to 2011 of CUD RICO conspiracy?

4 THE COURT: What can you allege happened after he
5 was sentenced by Judge Garaufis? That seems to me to be the
6 central issue here.

7 MR. DENNEHY: There was an incident involving
8 Mr. Balsamo, his codefendant. Where Balsamo owed money to
9 Mr. Graziano, and Mr. Badalamenti weighed in on it, that
10 Balsamo needed to pay it, which would be using his position --

11 THE COURT: Well, assume presumably you can provide
12 more details than what is there.

13 MR. DENNEHY: That was referenced in the report, but
14 frankly not sufficiently enough, Your Honor. His presence at
15 a meeting where he intimated to Balsamo he needs to pay money
16 to Graziano regarding gambling monies that are being made by
17 the family.

18 There's also evidence of an additional collection of
19 a debt from a restaurant owner around the same time as the
20 count of conviction before Judge Garaufis.

21 But the point being, he pled to a conspiracy, that
22 between that time period he and others conspired to collect
23 debts which were in and of themselves unlawful. So evidence
24 of extortion of conduct as to those same parties is evidence
25 of the CUD RICO. It's not double jeopardy; it's not double

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1 counting.

2 THE COURT: Well, look, it may not be double
3 jeopardy or double counting. Obviously it's an important
4 consideration for the Court whether or not that criminal
5 conduct that he is engaged in has been taken into account in
6 another sentencing proceeding and whether he has been, in
7 effect, sentenced on the same factual basis.

8 That's -- you can't say that's not a significant
9 issue. I mean, obviously it's a significant issue. The -- I
10 understood the government -- if the government's position is,
11 no it's the same count, there's nothing different. We just
12 think, you know, because he's in the Bonanno crime family he
13 deserves another sentence.

14 Well, that's fine, if that's your position. But I
15 didn't think that was your position. I thought the position
16 was that no, it's not that, it's other things; it's additional
17 conduct in 2011. I just need to know what the position is.
18 Whatever your position is, whatever the facts are, they are
19 what they are and people can make all of their reasoned
20 arguments about them. My point is I don't know what the facts
21 are.

22 MR. DENNEHY: Understood. And I will provide those
23 to probation.

24 THE COURT: And I want -- I want names of the
25 victims so that I can piece all of this together. And I

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1 want -- and I want more details.

2 MR. FISCHETTI: Your Honor, one thing that I think
3 is going to be extremely important for Your Honor to decide
4 what a proper sentence is for Mr. Badalamenti, is my position
5 that he pled guilty to the same criminal conduct, not the same
6 crime, before Judge Garaufis.

7 The government in its submission says that our
8 position to have him get credit for that is based on
9 conclusory, incorrect assertion of that 2003 guilty plea; and
10 the current guilty plea stem from the same conduct. The
11 defendant had offered no documentary support that the 2003
12 guilty plea and the current guilty plea stem from the same
13 conduct.

14 Now, Judge, I believe it absolutely is. What
15 happened during that time is Mr. Badalamenti and another
16 person from the Luchese family induced a person by the name of
17 Stanley to pay a gambling debt, substantial gambling debt of
18 which he hadn't paid and put interest on it. So we had been
19 arguing that.

20 And just for personal points, Your Honor, when they
21 superseded that in that indictment, that's the only count that
22 I couldn't win because I knew that Mr. Dennehy would just put
23 in the certificate of conviction. My point now is, Judge, if
24 you're asking for more information that you direct the
25 government to provide Your Honor and me with the grand jury

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1 minutes of what he was indicted for in this case. And I
2 predict that if Your Honor sees the grand jury minutes, Your
3 Honor will see -- I don't know, I don't have them, and perhaps
4 you can ask the government -- will see that all they did in
5 this indictment in this grand jury was present the same
6 evidence that they did in the other grand jury. I don't think
7 they called Mr. Stanley; that's all we know about him from ten
8 years ago. I think --

9 THE COURT: Is it your position, Mr. Fischetti, that
10 Stanley is John Doe number one or number two?

11 MR. FISCHETTI: I don't know. I can't tell from the
12 government. I know that's the only criminal act that we pled
13 to, Judge; only criminal conduct that we pled to. If you look
14 at our allocution and the allocution before Judge Garaufis,
15 it's the same. Why can't we just see the grand jury testimony
16 and we'll know?

17 THE COURT: More than that, you -- I believe
18 Mr. Badalamenti in his guilty plea talked about a specific
19 transaction?

20 MR. FISCHETTI: That's right, Judge.

21 THE COURT: And does the government understand the
22 transaction he allocuted to, to be the same one that he
23 allocuted to before --

24 MR. FISCHETTI: That's my question, Judge.

25 THE COURT: -- Judge Garaufis or a different --

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1 MR. DENNEHY: It's verbatim. It's verbatim. And I
2 think that's the position that the defense is taking, to put
3 forward this argument they have that it's only the same crime
4 and it should not be drawing an additional sentencing --

5 THE COURT: Is the crime before Judge Garaufis
6 included in the extortion that he pled guilty to before
7 Judge Garaufis included in the January '99 through
8 September 7, 2011?

9 MR. DENNEHY: It is certainly evidence of the larger
10 crime of THE CUD RICO conspiracy over that 12-year period,
11 yes.

12 THE COURT: When he entered the guilty plea, what
13 person did you think he was talking about?

14 MR. DENNEHY: At the time he entered the plea,
15 excuse me, he did not name anyone. And, frankly, I didn't
16 know that this is where the defense was going because I was
17 not privy to the Judge Garaufis case at all in 2002, as was
18 defense was.

19 But in any event, I knew that the CUD RICO crime
20 charged in this indictment involving Mr. Badalamenti involved
21 multiple victims, not just one, and a 12-year conspiracy to --

22 THE COURT: Is John Doe one or two Stanley?

23 MR. DENNEHY: Not in this.

24 THE COURT: In the report?

25 MR. DENNEHY: No.

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1 THE COURT: It's not?

2 MR. DENNEHY: No.

3 THE COURT: Well, that's why it's important to
4 give --

5 MR. DENNEHY: I understand.

6 THE COURT: -- a full, factual recitation to
7 indicate who all the John Does are and what all the extortion,
8 the number of people extorted during this conspiracy so that
9 we can deal with this issue.

10 MR. DENNEHY: I understand.

11 MR. FISCHETTI: Judge, can we get the grand jury
12 testimony? Because my position is very, very coherent, Judge?
13 The only thing he allocuted to was this conduct.

14 THE COURT: I don't know that that makes a
15 difference, Mr. Fischetti. Wait a minute --

16 MR. FISCHETTI: I think it does. Sorry.

17 THE COURT: If the government has other proof of his
18 involvement, I don't think it makes a difference that he, in
19 allocuting, that he pled, he allocuted to something that
20 happened before Judge Garaufis.

21 Now, if the other extortions the government puts
22 before the Court you say never happened, then you would be
23 entitled to a Fatico Hearing on those other extortions, it
24 seems to me. But I don't know that the fact that he just
25 admitted to something that he previously admitted to when

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1 we're talking about a conspiracy, if the government is able to
2 establish other extortions, means somehow I am bound to
3 consider that that's all that he did during the course of the
4 conspiracy.

5 So I don't think that's what the law is. I think if
6 the government established it, I could consider other
7 extortions pursuant to that conspiracy and come to the
8 conclusion, assuming the government established it, that he is
9 not simply guilty of the -- of the one transaction and that
10 the other conduct is something that the Court can take into
11 account.

12 I don't know why that's not the case.

13 MR. FISCHETTI: I understand what you're saying,
14 Judge, but we did not admit to any conduct, any conduct past
15 August 2002.

16 THE COURT: Is it your position that that would
17 preclude me from considering other conduct that the government
18 could prove, in terms of making my sentencing determination?

19 MR. FISCHETTI: No. No. But I think -- but I think
20 it comes in two parts. He has pled guilty to being in an
21 enterprise; there's no question about that. That's what makes
22 this crime different than the crime that he pled to before
23 Judge Garaufis. Although in that probation report they said
24 he was an acting captain of the Bonanno family or a member of
25 the enterprise. And what he did was collect this money by

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1 extortion. Now, that happened in 2002.

2 In 1999 they're claiming he was involved in an
3 extortion before -- with this fellow Floridia; we deny that.
4 And Pagan, the extortion here, we deny that. And on the
5 marijuana charge we understand that the person who could
6 testify about that is not -- is not even alive.

7 So, yes, we contest that, Your Honor. But even if
8 Your Honor considers that, Your Honor can consider that. In
9 my opinion, if Your Honor, if we lose a Fatco Hearing as
10 relevant conduct, the fact would still remain that he spent 12
11 months in jail for this same collection of an unlawful debt
12 from Stanley. And it's got to be in the grand jury minutes.
13 And if Your Honor reads --

14 THE COURT: The grand jury minutes, I don't
15 understand -- I mean, you would need grand jury minutes if you
16 were making a double jeopardy argument.

17 MR. FISCHETTI: No.

18 THE COURT: I don't know what this -- assuming that
19 both indictments were premised on the same basic conduct.

20 MR. FISCHETTI: Criminal act.

21 THE COURT: I don't know that that would preclude --
22 it certainly wouldn't preclude the government at trial from
23 proving other extortions that they hadn't put before the grand
24 jury.

25 MR. FISCHETTI: You're correct.

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1 THE COURT: And it certainly, even taking that out
2 further, it would clearly not preclude them from proving that
3 information in a sentencing proceeding. So I don't know why
4 absent a double jeopardy argument that's not being made why
5 grand jury minutes are relevant.

6 MR. FISCHETTI: Because I want to see and I think
7 Your Honor should see that it's the same conduct.
8 Mr. Badalamenti when he pled, he pled only to this conduct.
9 Your Honor asked him was he aware of any other conduct. And
10 being in an enterprise he said yes, but he didn't do anything
11 else. This is what he did.

12 Now, the government is not asking in their plea
13 agreement, Judge, and I think what Mr. Dennehy is saying now,
14 they're not asking for any relevant conduct to be considered
15 by Your Honor. Your Honor is now saying that well, wait a
16 minute, I may want to consider it even though you don't want
17 to present it.

18 He has it but he doesn't want to present it. So it
19 puts me in a kind of difficult position because we only pled
20 to what we did in 2002, and we had to plead to that because
21 the other charges we didn't do but we couldn't beat that
22 charge; all he had to do was put in the certificate of
23 conviction.

24 So if Your Honor finds that that act, the criminal
25 act, not the crime, the criminal conduct was the same in 2002,

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1 as the government is charging in 2011, then Your Honor can
2 consider whether or not he should get credit for that time,
3 even if --

4 THE COURT: Well, I think they've already said that
5 it was part of that, part of the conspiracy; that what he pled
6 guilty to was, in fact, part of the conspiracy. It's not
7 being counted in his prior conviction for that reason. So the
8 government isn't -- has never taken the position that that's
9 not relevant conduct, that it's not something that should be
10 taken into account.

11 MR. FISCHETTI: So Your Honor is saying you would
12 take that into account as prior --

13 THE COURT: Well, I think it's relevant that on a
14 portion of what the conspiracy that he's already served time
15 on a portion of the conspiracy, yeah. I don't think anybody's
16 arguing that that's not the case.

17 Are you, Mr. Dennehy?

18 MR. DENNEHY: No, I don't disagree with the
19 probation calculation of his criminal history category for
20 that purpose. The evidence of that crime is de facto evidence
21 of the larger conspiracy to which he's now pled guilty. It
22 has to be.

23 MR. FISCHETTI: Well, the odds of conspiracy is
24 collection of an unlawful debt.

25 THE COURT: Over an extended period of time.

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1 MR. FISCHETTI: Which they say is over an extended
2 period of time. It starts in 2002; they say it's more.

3 What Mr. Dennehy is saying, as I understand him to
4 say, not only the criminal history which the probation report
5 has said is relevant conduct, that he should or Your Honor can
6 give him consideration for the 12 months that he served within
7 this conspiracy, then at least we have an agreement as to
8 that. My position, my thought is that he's saying no, he
9 shouldn't get any credit for it whatsoever.

10 So if we -- we've bridged that gap, it's okay. Now
11 the next thing is what else did he do? And if they're not
12 asking in relevant conduct to put on any other evidence of
13 what he did, then I think I win.

14 If he's saying no, we can prove it, then let's --
15 let's go.

16 THE COURT: I think let's go is the answer.

17 MR. DENNEHY: That's fine.

18 THE COURT: I understand.

19 MR. FISCHETTI: Put Mr. Pagan on the stand, I'd love
20 to examine him.

21 MR. DENNEHY: The question then arises that this is
22 timely acceptance of responsibility on Mr. Badalamenti's part,
23 but we'll address that later.

24 MR. FISCHETTI: We accept responsibility for --

25 MR. DENNEHY: Not for the crime to which he pled

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1 guilty he's not accepting --

2 THE COURT: Wait a minute, Mr. Dennehy. You could
3 have made that argument before. Why are you making that
4 argument now? I haven't seen -- have you made the argument
5 that he's not entitled to acceptance?

6 MR. DENNEHY: He's not -- no. But he's now seeming
7 to claim that the only thing he did was the 2002 case before
8 Judge Garaufis and nothing else; yet, he pled guilty before --

9 THE COURT: That was apparent in all of his letters
10 and I haven't seen you --

11 MR. DENNEHY: His allocution before Your Honor under
12 oath is that he engaged in a conspiracy to collect debts for
13 12 years.

14 MR. FISCHETTI: No, it wasn't.

15 THE COURT: Mr. Dennehy, let me ask you a question,
16 since we seem to be -- there's a moving target here. In any
17 of your letters that you've written to the Court --

18 MR. DENNEHY: I have not.

19 THE COURT: -- to Mr. Fischetti, that you are taking
20 the position that he should not get acceptance?

21 MR. DENNEHY: I have not.

22 THE COURT: Well, don't you think that is something
23 you should have said before right now?

24 MR. DENNEHY: I'm basing it on what I'm hearing
25 right now from Mr. Fischetti.

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1 THE COURT: What you're hearing right now from
2 Mr. Fischetti, he says the same thing in his letters.

3 MR. DENNEHY: Not that he denies the 1999 extortion
4 or that he denies any other conduct at all. That he's only
5 done one other thing in 12 years. That's what I'm hearing
6 now.

7 THE COURT: Well, whatever.

8 MR. FISCHETTI: Your Honor, I didn't have to deny
9 any of that because Mr. Dennehy said that he didn't intend to
10 prove that by a preponderance of the evidence. So why did I
11 have to say that? The fact -- in fact, he said he was going
12 to ask for a Fatico Hearing in regards to that. So why do I
13 say, okay, I'll show you he didn't do it with a Fatico
14 Hearing, when he's not asking for one? So I think it's his
15 position that's changed, not mine.

16 THE COURT: There's nothing in the plea agreement
17 that says that the government had these -- is deciding not to
18 put relevant conduct before the Court, is it?

19 MR. DENNEHY: No.

20 THE COURT: Indeed, under the law you can't do that.
21 You can't fact bargain. Right?

22 MR. DENNEHY: Correct.

23 MR. FISCHETTI: That's correct.

24 THE COURT: So I don't have any information about
25 anything else in the indictment, in these reports.

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1 MR. FISCHETTI: Well, it's what the government had
2 told us, Your Honor.

3 THE COURT: Told you what?

4 MR. FISCHETTI: That they weren't going to introduce
5 any evidence for Your Honor to consider as relevant conduct.

6 MR. DENNEHY: No, we're not going to seek an upward
7 departure under the terms of the plea agreement. I will
8 supply information to probation so that Your Honor's questions
9 are sufficiently answered about the crime of conviction and
10 everything else.

11 THE COURT: Let me just ask you, turning to
12 Mr. Graziano for a minute.

13 MR. PARROTTA: Yes, Judge.

14 THE COURT: I take it, in flushing out
15 Mr. Graziano's role you'll indicate, because it's not clear to
16 me. Is it your position that Mr. Graziano was directing these
17 collections of debts from his prison cell?

18 MR. DENNEHY: No. That they occurred while he was
19 in prison and that upon his release he then was directing the
20 collection of them.

21 THE COURT: So you're not contending that while he
22 was in prison he was engaged in this conduct. Is that right?
23 Because, again, under the extortion in John Doe one, in 2005,
24 Anthony Graziano was incarcerated in federal prison. A
25 cooperating individual was directed to collect a

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1 100,000-dollar loan shark, a debit from John Doe, while
2 Graziano was in prison.

3 You don't mean that Graziano directed him to do that
4 somehow from prison or --

5 MR. DENNEHY: I guess the question is direction. He
6 was asked to do it, but he really didn't move on it until
7 Graziano came home or was in the halfway house and then
8 started to --

9 THE COURT: See, that's not clear in here. One
10 might reasonably read that paragraph as saying that in 2005
11 Graziano, from prison, directs the collection of this debt. I
12 don't know whether that's correct or not. I guess you're
13 saying it's not.

14 MR. DENNEHY: He put it out there and then really
15 started to put the pressure on him once he was out of custody.

16 THE COURT: Did he do something when he was in
17 prison or not?

18 MR. DENNEHY: My understanding is he directed the
19 cooperating witness to start looking for that money.

20 THE COURT: While he was in prison?

21 MR. DENNEHY: Yes.

22 MR. PARROTTA: Judge, I don't know that there's any
23 direct evidence of that in my sentencing memorandum. When I
24 discussed the nature and circumstances of the offense, it says
25 the offense that Mr. Graziano pled guilty to is based upon

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1 several consensually recorded conversations between
2 Mr. Graziano and his son-in-law, cooperating witness, and
3 those conversations that were turned over by the government
4 occurred on August 16, 2011, when my client was in a halfway
5 house -- actually, he was on home detention -- and they
6 proceeded until November 9, 2011. Additionally, when my
7 client was still on home detention and then he was arrested
8 about 13 days later, on November 21.

9 So all the evidence I have is that it occurred -- is
10 evidence that was provided to me of this conspiracy occurring
11 while my client was under house arrest.

12 THE COURT: I'm just trying to understand what the
13 report says. I don't know that it's better or worst or
14 anything else, I'm just trying to, as I said, understand the
15 facts which --

16 MR. PARROTTA: Yes, Judge. And I'm just trying --

17 THE COURT: -- are amazingly opaque.

18 On paragraph 26 in Mr. Graziano's report there's a
19 statement that I didn't understand. It says, Graziano
20 directed others to collect money on his behalf; however, there
21 is no evidence he had a proprietary interest in the funds
22 collected, i.e., it would not be kicked up to other family
23 members.

24 I don't know what that means.

25 MR. DENNEHY: The conduct engaged in by Graziano was

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1 to direct others to collect monies owed to Santora.

2 THE COURT: Santora, is that a higher level in the
3 chain than Mr. Graziano?

4 MR. DENNEHY: Well, depending on who you're asking
5 on what day. They're either equals or Graziano is --

6 THE COURT: I'm sorry, he was or wasn't collecting?

7 MR. DENNEHY: Graziano was directing others to
8 collect money to give to Santora; money that was owed to
9 Santora.

10 THE COURT: That, I understand. But I don't
11 understand the phrase about it not being kicked up to other
12 family members. The sentence doesn't make sense to me. Is it
13 something that you told the probation department that has some
14 meaning that I'm missing?

15 MR. DENNEHY: Not specifically.

16 THE COURT: I don't understand what that sentence
17 means.

18 MR. DENNEHY: Essentially, the probation department
19 found that there was neither a mitigating nor an aggravating
20 role for Graziano's participation because he was not receiving
21 any of the monies, it was simply done on behalf of a
22 colleague, so to speak.

23 THE COURT: But see, I don't understand that because
24 there's no information about Mr. Santora or anything else. I
25 believe that Mr. Graziano's plea was before the magistrate

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1 judge?

2 MR. DENNEHY: It was.

3 MR. PARROTTA: Yes, Judge Pollack.

4 MR. DENNEHY: Judge Bloom, I think.

5 MR. PARROTTA: Bloom.

6 THE COURT: Were there other pleas before the
7 magistrate judge or was that the only one?

8 MR. DENNEHY: I believe LaForte also took a plea
9 before the magistrate and I believe the balance of the
10 defendants took pleas before Your Honor. I recall two cases
11 outside of this courtroom.

12 MR. PARROTTA: I recall on the conference day just
13 before our guilty plea you were starting a civil trial and you
14 had very limited availability, is what you indicated to us,
15 and that's why we -- it was farmed out.

16 THE COURT: Have you reviewed those plea minutes,
17 counsel?

18 MR. PARROTTA: No, I have not.

19 THE COURT: Are you aware of any reason why, having
20 been there at the plea, why the Court should not accept
21 Mr. Graziano's plea before Magistrate Judge Bloom?

22 MR. PARROTTA: No, I am not, Judge.

23 THE COURT: So you were there? You remember --

24 MR. PARROTTA: Yes, I have notes.

25 THE COURT: Mr. Dennehy, are you aware of any

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1 reason --

2 MR. DENNEHY: No. I recall the allocution being
3 fairly sufficient. There was an interruption in the tape; the
4 lights went out in the courthouse.

5 THE COURT: I think it was all repeated, though.

6 MR. DENNEHY: I wasn't sure what was captured the
7 second time, but I know Judge Bloom did it twice just to make
8 sure that nothing got missed.

9 MR. PARROTTA: I recall that the magistrate was very
10 careful to start from the beginning once we were assured that
11 the audio was back on and we went through everything.

12 THE COURT: All right. There's only one minor issue
13 that I noted with the plea, and it dealt with specific
14 recitation of all the rights that he would be giving up.

15 The new federal rules -- they're not new, but the
16 most recent iteration of Rule 11 requires that a defendant be
17 advised that he has the right not only to cross examine
18 witnesses that the government produces, but also to have
19 subpoena power to bring witnesses in. I'm not sure that that
20 was conveyed.

21 Mr. Graziano?

22 THE DEFENDANT: Yes.

23 THE COURT: When your -- you want to step up for a
24 moment -- just sit there. Never mind.

25 THE DEFENDANT: I can stand.

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1 THE COURT: All right, just stand there.

2 Mr. Graziano, one of the -- one of the additional rights that
3 you would have if you went to trial, would be that you would
4 have the power, if you brought, if you wanted to, to bring
5 witnesses to the court to testify on your behalf.

6 In other words, you would have subpoena power. So
7 if there was some witness out there that you thought would
8 testify on your behalf and would be helpful to you, your
9 lawyer could get a subpoena signed by the Court that would
10 make that person come to court.

11 Do you understand that?

12 THE DEFENDANT: Yeah, sure.

13 THE COURT: All right.

14 Understanding that you had that right, does that in
15 any way change your mind about the fact that you wanted to
16 plead guilty?

17 THE DEFENDANT: No.

18 THE COURT: You're sure?

19 THE DEFENDANT: Yeah. I --

20 MR. PARROTTA: Let me explain it to him just one
21 moment.

22 THE DEFENDANT: I'm confused with this whole thing.

23 MR. PARROTTA: Let me explain it to you. We don't
24 want any confusion.

25 (Conferring.)

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1 THE DEFENDANT: Yes, I want to go forward.

2 THE COURT: Mr. Graziano, I think your lawyer has
3 just given you an even fuller explanation of what I tried to
4 explain to you. Is that correct?

5 THE DEFENDANT: Yes. Yes.

6 THE COURT: Do you still want the Court to accept
7 your guilty plea?

8 THE DEFENDANT: Yes. Yes.

9 THE COURT: Okay, thank you.

10 THE DEFENDANT: Thank you.

11 THE COURT: All right. Well, I have reviewed the
12 plea minutes, and with that additional explanation I'll accept
13 the recommendation that the plea be accepted.

14 The Defendant Graziano was advised of all his other
15 constitutional rights. It's clear that he understood them,
16 waived those rights, and there was a factual basis for the
17 plea.

18 All right, you want to provide this additional
19 information to the Court by August 6th, Mr. Dennehy?

20 MR. DENNEHY: Yes, Your Honor.

21 THE COURT: If there's any response by the
22 defendants to the added presentation, that should be provided
23 to the Court by August 13th.

24 MR. FISCHETTI: Yes, Your Honor.

25 THE COURT: And I want that as to all defendants --

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1 Mr. Calabrese and --

2 MR. DENNEHY: I understand.

3 THE COURT: Calabrese and LaForte as well.

4 MR. PARROTTA: August 13th for additional
5 information?

6 THE COURT: No, no. The government is going to
7 provide it by the sixth, you'll reply by the 13th.

8 MR. PARROTTA: Thank you, Judge.

9 THE COURT: And we'll -- Ms. Holley, is the 16th
10 available?

11 THE CLERK: Yes, Judge.

12 MR. DENNEHY: May I ask Your Honor for the next
13 week? I'm out of state that whole week --

14 THE COURT: I can't do the next week.

15 You're out of state from the 16th?

16 MR. DENNEHY: From the 11th to the 18th. Entire
17 family -- children, grandchildren, parents --

18 MR. PARROTTA: I'm in the same position. My family
19 will be at the Jersey Shore from August 4th for two weeks, but
20 I do come home to take a break from the family, and the 15 --
21 and the 15 nieces and nephews. I do come home usually Tuesday
22 morning. I'll work like Wednesday and Thursday during those
23 two weeks, and then go back Thursday evening.

24 MR. FISCHETTI: Your Honor, my position is I can't
25 believe Mr. Dennehy has grandchildren. So we'll take any date

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1 that's convenient to him.

2 THE COURT: I'll put it down for August 20th at
3 9:30.

4 MR. DENNEHY: Thank you, your Honor.

5 THE COURT: And that should be also for
6 Mr. Calabrese and Mr. LaForte.

7 MR. DENNEHY: Their sentence date?

8 THE COURT: Right.

9 MR. DENNEHY: So we'll adjourn their --

10 THE COURT: Advise them of the date that they need
11 to respond to your added submission as well.

12 MR. DENNEHY: I will.

13 MR. PARROTTA: Judge, I'll call Mr. Froccaro. I
14 know he's on vacation. I'll reach him. I'll give him a heads
15 up.

16 THE COURT: All right. So the government is clear
17 on what the court needs?

18 MR. DENNEHY: By August 6th, addendums to the PSRs
19 for all five defendants.

20 THE COURT: Yup.

21 MR. FISCHETTI: Your Honor, may I raise something?

22 On the date when we appear, will that be the date
23 for a Fatico Hearing, if there is one? And if it is, my
24 request of the Court is that -- I'm kind of in an unusual
25 position, because I didn't believe, perhaps I'm wrong, that

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23 for a Fatico Hearing, if there is one? And if it is, my
24 request of the Court is that -- I'm kind of in an unusual
25 position, because I didn't believe, perhaps I'm wrong, that

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1 the government was going to offer any evidence of relevant
2 conduct or call any of these witnesses when we signed the plea
3 agreement and spoke to them. Now perhaps they're in a
4 different posture and Your Honor is in a different posture --

5 THE COURT: Well, no commitment was made to you --

6 MR. FISCHETTI: None. None. None. Absolutely
7 none.

8 THE COURT: Okay.

9 MR. FISCHETTI: I agreed to that. But if there is
10 going to be, the government saying that he continued in actual
11 conduct during that period of time, other than just being in
12 the enterprise with Floridia, Pagan, the marijuana case charge
13 and the gambling charge, then I'm going to want a
14 Fatico Hearing.

15 If I had a Fatico Hearing, I would like to have and
16 I think I'm entitled to, the 3500 material; any material that
17 the government has on the witnesses they intend to call.

18 THE COURT: Well, we'll address all those issues --
19 I don't think we'll be going forward with the Fatico Hearing
20 on the 20th.

21 MR. FISCHETTI: May I just make a statement on the
22 record for Mr. Dennehy?

23 I understand that during a Fatico Hearing the
24 government can offer hearsay evidence. My position is going
25 to be, and we'll address it then, that in the event the

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1 government is going to present this relevant conduct and Your
2 Honor grants me a Fatico Hearing, I want the witnesses
3 there -- Mr. Floridia and Mr. Pagan. The government doesn't
4 intend to call them, but I would tell him right now I intend
5 to subpoena them.

6 THE COURT: Okay.

7 MR. FISCHETTI: Thank you, Your Honor.

8 MR. PARROTTA: Judge, one other issue.

9 The -- Mr. Fischetti, I think, may join in this.

10 This case is nine months old and we thought most of
11 our work would be done today, but there's going to be a month
12 or so of work. And visiting my client at MDC last week, last
13 Wednesday I went there at like 8:30 in the morning and
14 Mr. Fischetti's colleague was about ten minutes before me -- I
15 guess the early bird catches the worm. But I was locked out.
16 I couldn't see Mr. Graziano the rest of the day.

17 These separation, they're very problematic for us
18 and there's still more work to be done. And it's been a long
19 time, Judge. I know the government made some type of
20 boilerplate assertion that in the past Bonanno individuals
21 have done improper things while incarcerated. But it never
22 was specifically addressed to any of our clients. And it's --
23 it's becoming very cumbersome for the attorneys and for the
24 clients also. They have a tough time moving around.

25 My client needs to go to the infirmary for insulin

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1 testing and his insulin injection, and it's hard for him to
2 get there properly at the right time. He has to be tested and
3 his insulin has to be injected at proper times, and he's had
4 tough situations in the last six months where his sugar is
5 through the roof and he seeks medical attention. It's just
6 difficult. And I -- there's no specific assertion that I've
7 ever heard on this case why the separation should remain in
8 effect, and I'm going to ask you to consider that, Judge.

9 MR. FISCHETTI: One last thing, Judge.

10 Mr. Graziano for Mr. Parrotta were speaking on
11 Friday. I went down to see Mr. Badalamenti with my partner,
12 Ms. Malgeri, and we were locked out for an hour and a half
13 because we were told Mr. Graziano, I believe, had a social
14 visit that day and no one there would confirm that the visit
15 was over and he was back in the unit. So before we saw
16 Mr. Badalamenti, we spent two hours down there before he came
17 down.

18 So it's a difficult time for us. I was going to
19 make this argument, and I have it written down, today after
20 sentencing, thinking that we were going to be sentenced. I
21 spoke to Mr. Dennehy about this. He didn't agree to anything,
22 but I told him we were going to make the application to
23 reduce -- to withdraw the separation order after sentencing.

24 But now that we're not going to be sentenced, I'm
25 going to have to see Mr. Badalamenti on the basis that we may

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1 have a Fatico Hearing, and it's very difficult because of the
2 social visits, because of going to the infirmary. With all
3 these defendants I would join in an application.

4 MR. PARROTTA: And just one other thing, Your Honor.
5 Our clients could be directed or admonished.

6 They're here today. And Mr. Santora, who is also
7 incarcerated, separated, not here today, but if anything
8 improper that they would do certainly would be at their own
9 peril; they pled guilty. They have a wide range of sentencing
10 options that they're well aware of from the high one to the
11 low one.

12 They're going to be sentenced August 20th. They
13 would certainly -- if anything improper occurred, they would
14 certainly be doing that at their own peril, if the Court was
15 informed of that prior to August 20th.

16 THE COURT: Haven't we discussed this in the past?

17 MR. FISCHETTI: We have, Judge, and we tried to work
18 it out.

19 THE COURT: I asked you to work things out.

20 MR. FISCHETTI: I wrote a letter, Judge, and they
21 wrote a letter back. It just doesn't seem to work because of
22 the visits to the infirmary, things of that nature that can't
23 be controlled, and the waiting time is extraordinary, if we
24 get there at the wrong time. We did address it. I wrote on
25 it, and they wrote back.

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1 THE COURT: I don't think there was any application
2 pending before the Court, before me on this issue.

3 MR. FISCHETTI: There was, Judge, I made an
4 application.

5 THE COURT: No. No. I think I told -- my memory is
6 I told you to put it in writing and support it, and I don't
7 remember getting anything.

8 MR. FISCHETTI: I did send it to Your Honor.

9 THE COURT: I don't -- so all of this time you all
10 have been waiting for a ruling from me on --

11 MR. FISCHETTI: No. No. I -- I addressed the
12 problem to Your Honor. Your Honor -- well, we had a hearing
13 on it, or a meeting on it, and Your Honor told me, with
14 Ms. Argentieri, to try and work it out the best we can.

15 In other words, if he's got a visiting day, a social
16 visit, we would come another day. But it just hasn't worked
17 out because of the visits to the infirmary, visits to the
18 commissary, that we can't do it.

19 THE COURT: Mr. Dennehy?

20 MR. DENNEHY: Your honor, I wasn't party to any of
21 this, but certainly it's my responsibility now. And between
22 Mr. Graziano and Mr. Badalamenti, I certainly, if one of them
23 wants to go to MCC, that certainly would eliminate the problem
24 that's currently before the Court.

25 MR. FISCHETTI: I hadn't considered that, Your

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1 Honor. But to transfer him now, with all his property and
2 have him take --

3 MR. DENNEHY: Well, they have to decide what they
4 want.

5 MR. FISCHETTI: -- is an extreme measure.

6 MR. DENNEHY: That would certainly alleviate the
7 problem with these two lawyers going to see their clients in
8 the next two weeks preparing for a Fatico Hearing, if one is
9 in one jail and the other is in another jail.

10 THE COURT: I don't know what the facility --

11 MR. DENNEHY: I would certainly make that request,
12 if they asked me to do it.

13 THE COURT: Do you want Mr. Dennehy to make that
14 request?

15 MR. FISCHETTI: I don't know, Judge. I would have
16 to talk to my client about that.

17 THE COURT: Well, you all continue to discuss it.

18 MR. FISCHETTI: All right.

19 THE COURT: My understanding is it's a problem with
20 the prison officials. It's not just the United States that's
21 involved in this, but it's a problem with the prison
22 officials, concerns about security when all of the people are
23 alleged to be members of a single organized crime family, that
24 that raises security concerns within the prison and that's why
25 what I think has been discussed before and I think that's why

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1 we had that discussion, to try and work things out.

2 MR. FISCHETTI: We did.

3 THE COURT: And apparently, you know, it's been
4 worked --

5 MR. FISCHETTI: Judge, we'll live with it.

6 MR. PARROTTA: We're in the home stretch.

7 THE COURT: Nobody wants to go to MDC.

8 MR. DENNEHY: MCC.

9 MR. PARROTTA: They're settled there. They have
10 commissary --

11 THE COURT: Okay.

12 MR. FISCHETTI: Last thing, Judge. Before you
13 leave, would Your Honor most respectfully ask the government
14 to provide the grand jury minutes? There's no reason why we
15 shouldn't have that, especially if I may have a
16 Fatico Hearing.

17 THE COURT: I don't believe you said anything --

18 MR. FISCHETTI: He hasn't responded to my request.

19 THE COURT: What's your position? Do you care? Do
20 you want to give them to him or do you want to indicate why --

21 MR. DENNEHY: There's no legal basis why they're
22 entitled to those minutes, and I oppose it; I object to it.
23 It's not proper. And I will do what I am directed by the
24 Court, which is to plant these presentence reports, to give
25 the information that's necessary to Your Honor.

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1 MR. FISCHETTI: Your Honor can direct them.

2 THE COURT: Can I really do that?

3 MR. FISCHETTI: Yes, Judge. You're an Article III
4 Judge.

5 THE COURT: Wow, I'm glad that I have some power
6 around here. I recognize that I can direct him. I don't know
7 that an adequate basis has been provided for the Court to do
8 that, in light of the government's objection. If after you
9 get the additional information from the government you think
10 that --

11 MR. FISCHETTI: All right --

12 THE COURT: -- you can form a legal argument that
13 suggests you would be entitled to the grand jury minutes, I'd
14 be happy to hear it. Since you're not making the claim of
15 double jeopardy and everything that we've discussed today,
16 including the government's recognition that it -- the conduct
17 to which he allocuted comes within the -- rather, the conduct
18 that he certainly allocuted to before Judge Garaufis is within
19 the confines of this conspiracy and the Court can give
20 consideration to the fact that at least a portion of this
21 conspiracy he has served a period of time, I don't know the
22 point. But if you read over this, you have a point, I will be
23 able to consider it.

24 MR. FISCHETTI: Thank you. Thank you, ma'am.

25 MR. PARROTTA: Thank you, Judge.

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1 MR. ROSEN: Thank you, Judge.

2 MR. DENNEHY: Thank you, Judge.

3 (Adjourned.)

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